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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

16 WILD HORSE EDUCATION, a non-profit
17 corporation, and LAURA LEIGH individually,

Case No. 3:23-cv-00372-LRH-CLB

18 Plaintiff,

19 vs.

20 UNITED STATES DEPARTMENT OF
21 INTERIOR, BUREAU OF LAND
22 MANAGEMENT, and JON RABY, Nevada
23 State Director of the Bureau of Land
Management,

**AMICUS CURIAE BRIEF IN
SUPPORT OF PLAINTIFFS'
REQUEST FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

24 Defendant(s).

1 **TABLE OF CONTENTS**

3 Summary of Argument.....	Page 5
4 Argument.....	Page 6
5 I. Inhumane treatment of horse	Page 6
5 II. Danger of flying helicopters in very warm weather at high elevations ...	Page 7
6 III. Violation of NEPA.....	Page 9
7 Conclusion.....	Page 10

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TABLE OF AUTHORITIES

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	Page 8
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	Page 8
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	Page 7
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	Page 9

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2 **INTEREST OF AMICUS CURIAE**

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4 Lady Freethinker is a nonprofit animal protection organization committed to ending
5 animal cruelty and helping to create a more compassionate world for animals.

6

7 Lady Freethinker advocates on behalf of exploited animals, including wild horses, such
8 as through championing legislation to protect wild horses (including via the SAFE Act),
9 highlighting the efforts of indigenous groups that rescue wild horses and of other nonprofits that
10 have sued on wild horses' behalf, analyzing fatality data related to helicopter-assisted gathers,
11 and speaking up for wild horses during public comment periods and during meetings of the
12 National Wild Horse and Burro Advisory Board.

13 Lady Freethinker's employees have observed the federal roundups of wild horses in
14 Nevada by the Bureau of Land Management at the Triple B and Antelope complexes. We
15 witnessed dying and dead horses after undergoing inhumane and fatal repercussions from the
16 roundups in direct violation of the Wild Free-Roaming Horses and Burros Act. On behalf of our
17 4,740 supporters in Nevada and our 600,000 supporters worldwide, Lady Freethinker has long
18 advocated for an end to the inherent cruelty of helicopter roundups, including at the Antelope
19 Complex in Nevada.

20 Preserving the right of current and future generations to witness and appreciate iconic
21 wild horses on the range and to allow these animals to live their lives free from fear and
22 harassment, as Congress has mandated, aligns with Lady Freethinker's core mission. It is in
23 defense of these freedoms, and for the reasons stated in this brief, that Amicus Curiae Lady
24 Freethinker now urges this court to side with Wild Horse Education and immediately issue an
25 order and injunction compelling the Bureau of Land Management to cease implementation of the
26 2017 EA/FONSI for the Antelope Complex until the agency has fully complied with the Wild
27

1 Free-Roaming Horses and Burros Act, the National Environmental Policy Act, and other
2 applicable law.

3

4 **SUMMARY OF ARGUMENT**

5 Excess horses in Antelope Valley Complex in Nevada must be “humanely captured and
6 removed.” 16 U.S.C. § 1333(b)(2)(B). “Humane treatment means handling compatible with
7 animal husbandry practices accepted in the veterinary community, without causing *unnecessary*
8 *stress or suffering* to a wild horse or burro.” 43 C.F.R. § 4700.0-5(e) (emphasis added). Here, the
9 BLM gathers horses using helicopters in extremely high temperatures in a manner that leads to
10 horses breaking their necks (but not immediately dying), fracturing their legs while attempting to
11 escape and continuing to try to run away, and suffering many other physical and emotional types
12 of trauma. Young foals are rounded up as well. Blind horses are chased. Unquestionably, this is
13 not humane treatment of animals with which we otherwise enjoy a human-animal bond and
14 which form part of our national heritage.

15

16 Further, NEPA was not observed as will be described below and as plaintiffs set forth.
17

18 The 1969 NEPA is one of our cornerstone environmental laws and established a broad
19 framework for protecting the environment. While it may be tedious to follow the law in some
20 cases, that is not a relevant matter. The law is well established and sets forth specific
21 requirements which must be followed in letter and in spirit. That was not the case here.

22

23 Finally, helicopters do not fly well in high elevations and high altitudes. That
24 combination could prove dangerous for the helicopter-based BLM staff that conducts the round-
25 ups. These must be ceased immediately. The court should order the BLM to use more humane
26 methods in the future such as food- and water-based lures.

27

28

ARGUMENT

I. Inhumane treatment of horses

The horses at issue in this complaint are gathered in ways that lead to the horses suffering broken necks, catastrophic leg fractures, other types of leg fractures, heat exhaustion, hernias, and more. *See, e.g.*, Plaintiff’s Complaint at 14. Young foals are witnessing and have to follow their mothers being chased by helicopters. *Id.* Some horses are blind. *Id.*; BLM, 2023 Antelope Valley Complex North - Wild Horse Gather, Daily Gather Reports, *available at* <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada>. Plaintiffs amply describe the cruelty of this particular type of horse gather, which is exacerbated by very high temperatures and little available water in the Nevada desert.

Excess horses in the area must be “humanely captured and removed.” 16 U.S.C. § 1333(b)(2)(B). “Humane treatment means handling compatible with animal husbandry practices accepted in the veterinary community, without causing *unnecessary stress or suffering* to a wild horse or burro.” 43 C.F.R. § 4700.0-5(e) (emphasis added). In contrast, “[i]nhumane treatment means any *intentional or negligent action* or failure to act *that causes stress, injury, or undue suffering* to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community. 43 C.F.R. § 4700.0-5(f) (emphasis added).

Chasing sentient beings via helicopter in extremely high temperatures in manners that cause the number and types of injuries and deaths that plaintiffs have described is clearly inhumane. Alternatives such as food and water lures are available. *See, e.g., AP, Wild-Horse Roundups Kick up Questions about Handling Herds (August 10, 2019), available at <https://apnews.com/article/59a69a1002be4e87993fcf93bbe3a521>.* Opinions differ as to what should become of the horses in the area. Some interest groups argue that the horses should simply be left alone as they are an integral part and living symbols of the American Southwest

1 and our mutual cultural heritage. Others believe that they should be removed as they are not a
2 native species in this part of the world. Regardless, no reasonable argument can be made that the
3 law requiring “humane” treatments of horses and burros in the area is followed. It simply is not.
4 This practice must be discontinued while temperatures are high in the summer, which is also a
5 point of the year when many foals are present, or discontinued altogether in favor of other, more
6 humane methods.
7

8 **II. Danger of flying helicopters in very warm weather at high elevations**

9 Per Brian Byrod - a helicopter pilot for California Highway Patrol’s Valley Air Divisions
10 - when air is heated, it expands so that it becomes thinner than air that is cooler or cold. Corey
11 Buhai, *In Some National Parks, It’s Literally Too Hot for Helicopters to Fly*, Backpacker (August
12 23, 2021), available at <https://www.backpacker.com/news-and-events/news/in-some-national-parks-its-literally-too-hot-for-helicopters-to-fly/>. When air is thin, helicopters cannot get the lift
13 they need to fly. *Id.* In parks throughout the U.S., helicopter crews had to wait for nightfall and
14 cooler temperatures to get off the ground in 2021. *Id.* While helicopters can fly in temperatures
15 of 100 or perhaps even 110 degrees Fahrenheit at lower altitudes, they cannot at much higher
16 temperatures than that. *Id.*

17 High elevation flying exacerbates this problem. “That’s because the insufficient-lift issue
18 compounds at higher altitudes where the air is already thin, says Byrod, whose division serves
19 several peaks that top 11,000 or 12,000 feet.” *Id.* “Sixty-five degrees is really hot for those
20 altitudes. At that temperature, the aircraft is going to be really sluggish. You’re going to have
21 reduced performance,” he explains. *Id.* “Hotter than that, and the chopper might not be able to
22 fly at all. In 2007, an experienced pilot crashed in Washington State after taking off from about
23 5,000 feet in 70-degree temperatures. The diagnosis: The air was too thin for the pilot to
24 maintain control of the aircraft.” *Id.*

1 The Antelope Valley in Nevada sits at elevations ranging from around 5,000 feet to 9,258
2 feet. U.S. Department of the Interior, Bureau of Land Management. Antelope Valley HMA
3 (n.d.), *available at* [https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-
4 management-areas/nevada/antelope-valley](https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-management-areas/nevada/antelope-valley). In July 2023, the BLM gathered horses in Antelope
5 Valley North and South in temperatures often ranging in the 80s and even 90s or more. *See, e.g.*,
6 BLM, 2023 Antelope Valley Complex North - Wild Horse Gather, Daily Gather Reports,
7 *available at* [https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-
8 and-removals/nevada](https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada). Plaintiffs state that temperatures were often “exceeding 95 [] and often
9 exceeding 100 degrees Fahrenheit.” Plaintiff’s brief at 14.

10 Every year, temperatures increase dramatically across the globe. *See, e.g.*, Laura
11 Paddison, *This Month Is The Planet’s Hottest On Record By Far – And Hottest In Around*
12 *120,000 Years, Scientists Say* (July 27, 2023), CNN, *available at*
13 <https://www.cnn.com/2023/07/27/world/july-hottest-month-record-climate/index.html>. The
14 combination of altitude and high temperatures which only get warmer every year endangers
15 helicopter staff in addition to violating applicable horse gathering standards. Accidents are prone
16 to happen from this practice to people too. In addition to placing helicopter staff at risk, the risk
17 of crashing government-owned helicopters also puts at risk tax-payer funds that could and should
18 be better used on other objectives. Most importantly for Lady Freethinker’s objectives and
19 interests, horses are known to panic even to the point that they severely injure themselves when
20 attempts are made to round them up via helicopter. *See, e.g.*, Plaintiff’s Complaint at p. 14.
21 Other, more humane, methods exist. If helicopter-assisted gathers must be conducted at all, they
22 should, at a minimum, be conducted at times when temperatures are not as hot as has been the
23 case with the gathers at issue in this complaint. It is arguably needlessly cruel in and of itself to
24 use helicopters when other methods are available such as using water and/or food lures. AP,
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1 Wild-Horse Roundups Kick up Questions about Handling Herds (August 10, 2019), *available at*
 2 <https://apnews.com/article/59a69a1002be4e87993fcf93bbe3a521>.

3 It is also arguably cruel to gather horses with young foals as is the case in the summer.
 4 *See, e.g.,* <https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/nevada>. If horses must be gathered, this could be done at a time of the year when very
 6 young foals are not exposed to the practice.
 7

8 **III. Violation of NEPA**

9 Plaintiffs assert that the BLM relied on a 2017 NEPA assessment that found No
 10 Significant Impact. Complaint at 17.

11 First, “[t]here is not fixed timeline or expiration date for programmatic NEPA documents,
 12 just as there is no fixed timeline or expiration date for other types NEPA review [sic].” Federal
 13 Register Vol. 79, No. 246 at 76988 (Dec. 23, 2014), *available at*
 14 <https://www.govinfo.gov/content/pkg/FR-2014-12-23/pdf/2014-30034.pdf>. However,

16 as a rule of thumb … if the EIS concerns an ongoing program, EISs that are more
 17 than five years old should be carefully reexamined to determine if a supplement is
 18 required … When a programmatic review is projected to have a long life span to
 be used for subsequent decision-making, the final guidance states that an agency
 should pay close attention to the possible effects of new information.

19 *Id.* Here, the EIS was six years old and thus exceeded clear federal guidelines. Second,
 20 new information surfaces about climate change in various locations around the nation on a very
 21 frequent basis. These two factors alone militated in favor of conducting a new EIS. Similarly,
 22 new information about the abilities of aircraft to fly in thin air and very high temperatures also
 23 must be presumed to surface frequently as does information about all types of technology. A
 24 new EIS should have been implemented.

26 Second, “the No Significant Impact” finding was arguably reached in a manner that must
 27 be said to be arbitrary and capricious and thus not in accordance with the law, 5 U.S.C. § 706(2)
 28

1 given the very large amount of horse injuries and fatalities under law that requires humane
2 treatment of the animals.

3
4 **CONCLUSION**

5 This court should grant plaintiff, Wild Horse Education's Motion for Temporary
6 Restraining Order and Preliminary Injunction.

7
8 Respectfully submitted,

9
10 /s/ P. Sterling Kerr
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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, I served the foregoing *AMICUS CURIAE RESPONSE TO PLAINTIFFS' REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION* with the Clerk of the Court for the United States District Court for the District of Nevada by using the CM/ECF system, which will serve a copy of the same on the counsel of record.

/s/ Lisa Peters
Employee of Kerr Simpson Attorneys
At Law